D.B.CIVIL WRIT PETITION NO. 1773/2006
Jeeva v. State of Rajasthan & ors.

Date of order : 27.04.2006

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE DINESH MAHESHWARI

Shri T.S.Champawat for the petitioner

This writ petition has been filed challenging the vires of sub-section (7) of section 89 of the Rajasthan Land Revenue Act, 1956. Sub-section (7) of section 89 runs as under :

> "Any person who without lawful authority extracts or removes minerals from any mine or quarry, the right to which vests in and has not been assigned by the State Government, shall, without prejudice to any other action that may be taken against him, be liable, on the order in writing of the Collector pay a penalty not exceeding a sum calculated at the rate of fifty rupees per ton, or a fraction thereof, of the mineral so extracted or removed.
>
> Provided that if the sum so calculated is less than one thousand rupees, the penalty may be such larger sum not exceeding one thousand rupees as the Collector may impose.
>
> Explanation – In this section, minerals include any sand or clay which the State Government may declare to have a commercial value or to be required for any public purpose."

It would appear that the above provision contains a penal

clause in respect of unlawful extraction or removal of mineral from any mine or quarry, right to which has vested in the State and has not been assigned by the State to the person concerned. A proceeding has been initiated against the petitioner for alleged extraction/removal of minerals finding himself in an unenviable position the petitioner has come to this Court challenging the very vires of the provision.

A statute can be challenged on the ground of lack of legislative competence or being violative of the fundamental rights under Part III of the Constitution. Case of the petitioner is that the subject 'mines and minerals' is covered by entry 54 of List I and therefore, no legislation could be made by the State in the matter. He referred to entry 54 of List I. The entry runs as - "Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest." On a plain reading of the above entry it would appear that the regulation of mines and mineral development is a subject which falls under the legislative competence of the Parliament "to the extent such development under the control of the Union is declared by Parliament by law" . It is by virtue of this entry that the Parliament has enacted the Mines & Mineral (Development and Regulation) Act, 1957. It is clear that competence of the Union is not exclusive. The Parliament may by law

declare the "extent" to which the Regulation and development of mines and minerals would be under the control of Union in public interest. Entry 23 of List II of the Constitution empowers the State legislature to enact law with respect to "mines and mineral development but subject to provisions of List I with respect to regulation and development under the control of the Union". In other words, except to the extent the regulation and development of mines and minerals is brought under the control of Union by law, viz, the Mines and Minerals (Development and Regulation) Act, 1957, the State legislature is competent to enact law with respect to regulation and development of mines and mineral development. In view of entry 23 of List II read with entry 54 of List I, his grievance as to the legislative incompetence of the State is totally unfounded and challenge to the vires therefore, is wholly misconceived.

Adverting to the instant case, as indicated above, sub-section (7) of section 89 of the Rajasthan Land Revenue Act, contains a penalty clause. All that it says is if right in mines or quarry vests in the State and the same has not been assigned by it to any person, he cannot extract or remove minerals therefrom. If he does so, without prejudice to any other action that may be taken against him, he will be liable to penalty as mentioned therein. Whether the petitioner extracted or removed minerals from the mine or quarry in question

making him liable under the provisions of section 89(7) is a question of fact. It is open to the petitioner to take appropriate defence in the proceeding initiated against him.

In the result, we find no merit in this writ petition which is accordingly dismissed.

(DINESH MAHESHWARI),J. (S.N.JHA), C.J.

Mathur/